

OFFICIAL GAZETTE



GOVERNMENT OF GOA

Note: There is one Extraordinary issue to the Official Gazette Series I No. 5 dated 5-5-2005, namely, Extraordinary dated 6-5-2005 from pages 59 to 62 regarding Notification from Department of Legal Metrology (Office of the Controller, Legal Metrology).

GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

Notification

10/3/2003-LA

The Companies (Second Amendment) Act, 2002 (Central Act No.11 of 2003), which has been passed by the Parliament and assented to by the President of India on 13-1-2003 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 14-1-2003, is hereby published for general information of the public.

S. G. Marathe, Under Secretary (Drafting).

Panaji, 19th February, 2004.

The Companies (Second Amendment)
Act, 2002

AN

ACT

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Companies (Second Amendment) Act, 2002.

2. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. *Amendment of section 2.*— In section 2 of the Companies Act, 1956 (hereinafter 1 of 1956. referred to as the principal Act),—

(a) after clause (1A), the following clause shall be inserted, namely:—

“(1B) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10 FR;”;

(b) after clause (19A), the following clauses shall be inserted, namely:—

“(19AA) “industrial company” means a company which owns one or more industrial undertakings;

“(19AB) “industrial undertaking” means any undertaking, pertaining to any industry carried on in one or more factories or units by any company, as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 but does not 65 of 1951. include a small-scale industrial undertaking as defined in clause (j) of that section;”;

(c) after clause (29), the following clause shall be inserted, namely:—

“(29A) “net worth” means the sum total of the paid-up capital and free reserves after deducting the provisions or expenses as may be prescribed.

Explanation.— For the purposes of this clause, "free reserves" means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation;";

(d) after clause (31A), the following clause shall be inserted, namely:—

'(31AA) "operating agency" means any group of experts consisting of persons having special knowledge of business or industry in which the sick industrial company is engaged and includes public financial institution, State level institution, scheduled bank or any other person as may be specified as the operating agency by the Tribunal;';

(e) in clause (33), for the words "High Courts", the words "the Tribunal" shall be substituted;

(f) after clause (46A), the following clauses shall be inserted, namely:—

'(46AA) "sick industrial company" means an industrial company which has—

(i) the accumulated losses in any financial year equal to fifty percent. or more of its average net worth during four years immediately preceding such financial year; or

(ii) failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company;

(46AB) "State level institution" means any of the following institutions, namely:—

'(a) the State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951; 63 of 1951.

(b) the State Industrial Development Corporations registered under this Act;';

(g) after clause (49), the following clause shall be inserted, namely:—

'(49A) "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 10 FB;';

3. *Amendment of section 10E.*— In section 10E of the Principal Act, in sub-section (1A), for the words "conferred on it", at both the places where they occur, the words, brackets and figures

"conferred on it before the commencement of the Companies (Second Amendment) Act, 2002" shall be substituted.

4. *Amendment of section 10F.*— In section 10F of the principal Act, after the words "any decision or order of the Company Law Board", the words, brackets and figures "made before the commencement of the Companies (Second Amendment) Act, 2002" shall be inserted.

5. *Insertion of new section 10FA.*— After section 10F of the principal Act, the following section shall be inserted, namely:—

"10FA. *Dissolution of Company Law Board.*—

(1) On and from the commencement of the Companies (Second Amendment) Act, 2002, the Board of Company Law Administration constituted under sub-section (1) of section 10E shall stand dissolved.

(2) On the dissolution of the Company Law Board, the persons appointed as Chairman, Vice-Chairman and members and officers and other employees of that Board and holding office as such immediately before such commencement shall vacate their respective offices and no such Chairman, Vice-Chairman and member and officer and other employee shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service:

Provided that every officer or other employee, who has been, immediately before the dissolution of the Company Law Board, appointed on deputation basis to that Board, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer and other employee of the Company Law Board employed on regular basis by that Board, shall become, on and from the dissolution of the Board, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for 14 of 1947.

the time being in force, the transfer of the services of any officer or other employee employed in the Company Law Board, to the Central Government shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal (including the Tribunal under this Act) or other authority.

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Company Law Board to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed.

(3) All matters or proceedings or cases pending before the Company Law Board on or before the constitution of the Tribunal under section 10FB, shall, on such constitution, stand transferred to the National Company Law Tribunal and the said Tribunal shall dispose of such cases in accordance with the provisions of this Act."

6. *Insertion of new Parts IB and IC.*—After Part 1A of the Principal Act, the following Parts shall be inserted, namely:—

'PART' IB

National Company Law Tribunal

10FB. *Constitution of National Company Law Tribunal.*—The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

10FC. *Composition of Tribunal.*—The Tribunal shall consist of a President and such number of Judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

10FD. *Qualifications for appointment of President and Members.*—(1) The Central

Government shall appoint a person who has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal.

(2) A person shall not be qualified for appointment as Judicial Member unless he—

(a) has, for at least fifteen years, held a judicial office in the Territory of India; or

(b) has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years; or

(c) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Legal Branch) in Senior Administrative Grade in that service]; or

(d) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government (including at least three years of service as a Member of the Indian Legal Service in Grade I of that service).

(3) A person shall not be qualified for appointment as Technical Member unless he —

(a) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Accounts Branch) in Senior Administrative Grade in that service]; or

(b) is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme, or held any other post under the Central Government or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India, for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law; or

(c) is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949; or

38 of 1949.

(d) is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959; or

23 of 1959.

(e) is, or has been, for at least fifteen years working experience as a Secretary in whole-time practice as defined in clause (45A) of section 2 of this Act and is a member of the Institute of the Companies Secretaries of India constituted under the Company Secretaries Act, 1980; or 56 of 1980.

(f) is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics, banking, industry, law, matters relating to industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal; or

(g) is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947; or 14 of 1947.

(h) is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour.

Explanation.— For the purposes of this Part,—

(i) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (2) of section 10FD and includes the President of the Tribunal;

(ii) "Technical Member" means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.

10FE. Term of office of President and Members.— The President and every other Member of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment:

Provided that no President or other Member shall hold office as such after he has attained,—

(a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years:

Provided further that the President or other Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such.

10FF. Financial and administrative powers of Member Administration.— The Central Government shall designate any Judicial Member or Technical Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules which may be made by the Central Government:

Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Tribunal subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration.

10FG. Salary, allowances and other terms and conditions of service of President and other Members.— The salary and allowances and other terms and conditions of service of the President and other Members of the Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the President and other Members shall be varied to their disadvantage after their appointment.

10FH. Vacancy in Tribunal.— (1) In the event of the occurrence of any vacancy in the office of the President of the Tribunal by reason of his death, resignation or otherwise, the seniormost Member shall act as the President of the Tribunal until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Tribunal, as the Central Government, may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the President or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

10FI. Resignation of President and Member.— The President or a Member of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the President or a Member shall, unless he is permitted by the Central Government

to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of the term of office, whichever is the earliest.

10FJ. Removal and suspension of President or Member.— (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member of the Tribunal; or
- (d) has required such financial or other interest as is likely to affect prejudicially his functions as such President or Member of the Tribunal; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that no such President or a Member shall be removed on any of the grounds specified in clauses (b) to (e) without giving him reasonable opportunity of being heard in respect of those charges.

(2) The President or a Member of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the President or Member of the Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or a Member referred to in sub-section (2).

10FK. Officers and employees of Tribunal.— (1) The Central Government shall provide the Tribunal with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Member Administration.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

10FL. Benches of Tribunal.— (1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal, out of which one shall be a Judicial Member and another shall be a Technical Member referred to in clauses (a) to (f) of sub-section (3) of section 10FD:

Provided that it shall be competent for the Members authorised in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President of the Tribunal may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member of the Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President of the Tribunal or, as the case may be, referred to him for transfer to such Bench as the President may deem fit.

(2) The President of the Tribunal shall, for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies, constitute one or more Special Benches consisting of three or more Members, each of whom shall necessarily be a Judicial Member, a Technical Member appointed under any of the clauses (a) to (f) of sub-section (3) of section 10FD, and a Member appointed under clause (g) or clause (h) of sub-section (3) of section 10FD:

Provided that in case a Special Bench passes an order in respect of a company to be wound up, the winding up proceedings of such company may be

conducted by a Bench consisting of a single Member.

(3) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members of the Tribunal who have heard the case, including those who first heard it.

(4) There shall be constituted such number of Benches as may be notified by the Central Government.

(5) In addition to the other Benches, there shall be a Principal Bench at New Delhi presided over by the President of the Tribunal.

(6) The Principal Bench of the Tribunal shall have powers of transfer of proceedings from any Bench to another Bench of the Tribunal in the event of inability of any Bench from hearing any such proceedings for any reason:

Provided that no transfer of any proceedings shall be made under this sub-section except after recording the reasons for so doing in writing.

10FM. Order of Tribunal.— (1) The Tribunal may, after giving the parties to any proceeding before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the parties.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

10FN. Power to review.— The Tribunal shall have power to review its own orders.

10FO. Delegation of powers.— The Tribunal may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be

specified in the order, to any Member or officer or other employee of the Tribunal or other person authorised by the Tribunal to manage any industrial company or industrial undertaking or any operating agency, such powers and duties under this Act as it may deem necessary.

10FP. Power to seek assistance of Chief Metropolitan Magistrate and District Magistrate.—

(1) The Tribunal or any operating agency, on being directed by the Tribunal may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other document of such sick industrial company, be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him,—

(a) take possession of such property, books of account or other documents; and

(b) cause the same to be entrusted to the Tribunal or the operating agency.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

PART IC

Appellate Tribunal

10FQ. Appeal from order of Tribunal.— (1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filled within a period of forty-five days from the date on which a copy of the order or decision made

by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.

10FR. *Constitution of Appellate Tribunal.*— (1) The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act.

(2) The Chairperson of the Appellate Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(3) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.

10FS. *Vacancy in Appellate Tribunal, etc.*— (1) In the event of the occurrence of any vacancy in

the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Member of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

10 FT. *Term of office of Chairperson and Members.*— The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:

Provided that no Chairperson or other Members shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-seven years.

10FU. *Resignation of Chairperson and Members.*— The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

10FV. *Removal and suspension of Chairperson and Members of Appellate Tribunal.*— (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such Chairperson or Member of the Appellate Tribunal; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or a Member of the Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

10FW. *Salary, allowances and other terms and conditions of service of Chairperson and Members.*— (1) The salary and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after appointment.

10FX. *Selection Committee.*— (1) The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—

- (a) Chief Justice of India or his nominee..... Chairperson;
- (b) Secretary in the Ministry of Finance and Company Affairs..... Member;
- (c) Secretary in the Ministry of Labour..... Member;
- (d) Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department) Member;
- (e) Secretary in the Ministry of Finance and Company Affairs (Department of Company Affairs)..... Member;

(2) The Joint Secretary in the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or

Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be.

(6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

10 FY. *Chairperson, etc., to be public servants.*— The Chairperson, Members, officers and other employees of the Appellate Tribunal and the President, Members, Officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

10 FZ. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceedings shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee or against the Tribunal, its President, Members, officer or other employee or operating agency or liquidator or any other person authorised by the Appellate Tribunal or the Tribunal in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

10 FZA. *Procedure and powers of Tribunal and Appellate Tribunal.*— (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure. 5 of 1908.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send its case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of section 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Tribunal and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

10 G. *Power to punish for contempt.*— The Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise, for this

purpose under the provisions of the Contempt of Courts Act, 1971 which shall 70 of 1971. have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the reference to the Advocate-General in section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

10GA. *Staff of Appellate Tribunal.*— (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

10GB. *Civil court not to have jurisdiction.*— No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and to injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.

10GC. *Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.*— No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal or the Appellate Tribunal, as the case may be.

10GD. *Right to legal representation.*— The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

Explanation.— For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and 38 of 1949. who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Companies Secretaries Act, 1980 and 56 of 1980. who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and 23 of 1959. who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

10GE. *Limitation.*— The provisions of the Limitation Act, 1963 shall, as far as 36 of 1963. may be, apply to an appeal made to the Appellate Tribunal.

10GF. *Appeal to Supreme Court.*— Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

7. *Substitution of new section for section 17.*— For section 17 of the Principal Act, the following section shall be substituted, namely:—

"17. *Special resolution and confirmation by Central Government required for alteration of memorandum.*— (1) A company may, by special

resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some business which under the existing circumstances may conveniently or advantageously be combined with the business of the company; or

(e) to restrict or abandon any of the objects specified in the memorandum; or

(f) to sell or dispose of the whole or any part of the undertaking, or of any of the undertakings, or the company or;

(g) to amalgamate with any other company or body of persons.

(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on petition.

(3) Before confirming the alteration, the Central Government must be satisfied —

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Central Government, be affected by the alteration; and

(b) that, with respect to every creditor who, in the opinion of the Central Government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central Government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured:

Provided that the Central Government may, in the case of any person or class of persons, for

special reasons, dispense with the notice required by clause (a).

(4) The Central Government shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity of appearing before the Central Government and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

(6) The Central Government shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well to the rights and interests of the creditors of the company and of every class of them.

(7) The Central Government may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Central Government for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement:

Provided that no part of the capital of the company may be expended for any such purchase."

8. *Amendment of sections 18, 19, 43 and 49.*— In sections 18, 19, 43 and 49 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.

9. *Amendment of sections 55A and 58A.*— In sections 55A and 58A of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

10. *Amendment of section 58AA.*— In section 58AA of the principal Act.—

(a) for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted;

(b) in sub-section (3), in the first proviso, for the words "the Board", the words "the Tribunal" shall be substituted.

11. *Amendment of section 75.*— In section 75 of the principal Act, in sub-section (1), in clause (c), in sub-clause (ii), for the word "Court", the word "Tribunal" shall be substituted.

12. *Amendment of section 79.*— In section 79 of the principal Act,—

(a) for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted;

(b) in sub-section (2), in clause (ii) in the proviso, for the words "unless that Board is of opinion", the words "unless the Central Government is of opinion" shall be substituted;

(c) after sub-section (3), the following proviso shall be inserted, namely:—

'Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.'

13. *Amendment of section 80A.*—In section 80A of the principal Act,—

(a) in sub-section (1), in the proviso, for the words "Company Law Board", the word "Tribunal" shall be substituted;

(b) in sub-section (2), for the words "any court", the words "any court or the Tribunal" shall be substituted.

14. *Amendment of sections 100 to 104 and 107.*— In sections 100 to 104 and 107 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

15. *Amendment of sections 111 and 111A.*— In sections 111 and 111A of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

16. *Amendment of section 113.*—In section 113 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.

17. *Amendment of section 117B.*— In section 117 B of the principal Act,—

(a) in sub-section (4), for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted;

(b) after sub-section (4), the following proviso shall be inserted, namely:—

'Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.'

18. *Amendment of section 117C.*— In section 117C of the principal Act, for the words "Company Law Board", at both the places where they occur, the word "Tribunal" shall be substituted.

19. *Amendment of section 118.*— In section 118 of the principal Act, for the words "Company Law Board", the words "Central Government" shall be substituted.

20. *Substitution of new section for section 141.*— For section 141 of the principal Act, the following section shall be substituted, namely:—

"141. *Rectification by Central Government of register of charges.*— (1) The Central Government, on being satisfied —

(a) that the commission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or section 139, was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or

(b) that on other grounds, it is just and equitable to grant relief,

may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction

shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) The Central Government may make such order as to the costs of an application under sub-section (1) as it thinks fit.

(3) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered."

21. *Amendment of sections 144 and 163.*— In sections 144 and 163 of the principal Act, for the words "Company Law Board", the words "Central Government" shall be substituted.

22. *Substitution of new section for section 167.*— For section 167 of the principal Act, the following section shall be substituted, namely:—

'167. Power of Central Government to call annual general meeting.— (1) If default is made in holding an annual general meeting in accordance with section 166, the Central Government may, notwithstanding anything contained in this Act or in the articles of the Company, on the application of any member of the company, call, or direct the calling of, a general meeting of the Company and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.

Explanation.— The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company:

Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.'

23. *Amendment of section 168.*— In section 168 of the principal Act, for the words "Central Government", the words "Tribunal or the Central Government, as the case may be" shall be substituted.

24. *Substitution of new section for section 186.*— For section 186 of the principal Act, the following section shall be substituted, namely:—

"186. Power of Tribunal to order meeting to be called.— (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company, or of any member of the company who would be entitled to vote at the meeting.—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the Company's articles.

Explanation.— The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted."

25. *Amendment of sections 188 and 196.*— In section 188 and 196 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.

26. *Amendment of section 203.*— In section 203 of the principal Act,—

(a) in sub-section (1), for the word "Court", at both the places where it occurs, the words "Court or the Tribunal, as the case may be" shall be substituted;

(b) in sub-section (2),—

(i) in clause (a), for the words "includes the Court by which he is convicted as well as any

Court having jurisdiction to wind up", the words "includes the Court or the Tribunal by which he is convicted, as well as any Court or the Tribunal having jurisdiction to wind up" shall be substituted;

(ii) in clause (b), for the word "Court", the words "Court or Tribunal" shall be substituted;

(c) in sub-sections (3) and (4), for the words "Court having jurisdiction to wind up a company", the words "Court or the Tribunal having jurisdiction to wind up a company" shall be substituted;

(c) in sub-section (5), for the words "attention of the Court", the words "attention of the Court or the Tribunal, as the case may be," shall be substituted.

27. *Amendment of sections 219 and 225.*— In sections 291 and 225 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.

28. *Amendment of section 227.*— In section 227 of the principal Act, in sub-section (3), after clause (f), the following clause shall be inserted, namely:—

"(g) whether the cess payable under section 441A has been paid and if not, the details of amount of cess not so paid."

29. *Amendment of sections 235 and 236.*— In sections 235 and 236 of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

30. *Amendment of section 237.*— In section 237 of the principal Act, in clause (b), in the opening portion, for the words "if in the opinion of the Company Law Board", the words "in its opinion or in the opinion of the Tribunal" shall be substituted.

31. *Amendment of section 241.*— In section 241 of the principal Act, in sub-section (2), in clause (dd), for the words "Company Law Board", the word "Tribunal" shall be substituted.

32. *Amendment of section 243.*— In section 243 of the principal Act, for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

33. *Amendment of sections 247, 250, 251 and 269.*— In sections 247, 250, 251 and 269 of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

34. *Amendment of section 284.*— In section 284 of the principal Act, in sub-section (4), in the proviso, for the words "Company Law Board", the words "Central Government" shall be substituted.

35. *Amendment of sections 304 and 307.*— In sections 304 and 307 of the principal Act, for the words "Company Law Board", the words "Central Government or Tribunal, as the case may be" shall be substituted.

36. *Amendment of section 318.*— In section 318 of the principal Act, in sub-section (3), in clause (d), for the words "or subject to the supervision of the Court", the words "order of the Tribunal" shall be substituted.

37. *Amendment of section 349.*— In section 349 of the principal Act, in sub-section (4), after clause (o), the following clause shall be inserted, namely:—

"(p) amount paid as cess under section 441A."

38. *Amendment of Chapter IVA of Part VI.*— In Part VI of the principal Act, in Chapter IVA, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

39. *Amendment of section 391.*— In section 391 of the principal Act, —

(a) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(b) sub-section (7) shall be omitted;

(c) below sub-section (7), the portion beginning with the words "The provisions of" and ending with the words "the application" shall be substituted.

40. *Substitution of new section for section 392.*— For section 392 of the principal Act, the following section shall be substituted, namely:—

"392. *Power of Tribunal to enforce compromise and arrangement.*— (1) Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal Aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Second Amendment) Act, 2002 sanctioning a compromise or an arrangement.”.

41. *Amendment of section 394.*— In section 394 of the principal Act,—

(a) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted;

(b) in the first proviso to sub-section (1), the words “the Company Law Board or” shall be omitted.

42. *Amendment of sections 394A and 395.*— In sections 394A and 395 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

43. *Amendment of section 396.*— In section 396 of the principal Act, for the words “Company Law Board”, at both the places where they occur, the word “Tribunal” shall be substituted.

44. *Amendment of Chapter VI of Part VI.*— In Part VI of the principal Act, in Chapter VI, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

45. *Amendment of section 410.*— In section 410 of the principal Act,—

(a) for the words “Company Law Board”, the word “Tribunal” shall be substituted;

(b) for the words “or Board”, the words “or the Tribunal” shall be substituted.

46. *Substitution of new section for section 424.*— For section 424 of the principal Act, the following section shall be substituted, namely:—

“424. *Application of sections 421 to 423 to, receivers and managers appointed by Tribunal, and, managers appointed in pursuance of an instrument.*— The provisions of sections 421 to 423 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by the Tribunal or to any person appointed to manage, the property of a company under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument.”.

47. *Insertion of new Part VIA.*—After Part VI of the Principal Act, the following Part shall be inserted, namely:—

“PART VIA

Revival and rehabilitation of sick Industrial Companies

424A. *Reference to Tribunal.*— (1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal, and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed, for determination of the measures which may be adopted with respect to such company:

Provided that nothing contained in this sub-section shall apply to a Government company.

Provided further that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company.

(2) The application under sub-section (1) shall be accompanied by a certificate from an auditor from a panel of auditors prepared by the Tribunal indicating—

(a) the reasons of the net worth of such company being fifty per cent. or less than fifty per cent.; or

(b) the default in repayment of its debt making such company a sick industrial company,

as the case may be.

(3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(4) A reference under sub-section (1) or sub-section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.

(5) The Tribunal may, on receipt of a reference under sub-section (1), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.

424B. Inquiry into working of sick industrial companies.— (1) The Tribunal may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

(a) upon receipt of a reference with respect to such company under section 424A; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Tribunal may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into the scheme for revival and make a report with respect to such matters as may be specified in the order.

(3) The operating agency shall complete its inquiry as expeditiously as possible and submit its report to the Tribunal within twenty-one days from the date of such order:

Provided that the Tribunal may extend the said period to forty days for reasons in to be recorded in writing for such extension.

(4) The Tribunal shall conclude its inquiry as expeditiously as possible and pass final orders in the proceedings within sixty days from the commencement of the inquiry:

Provided that the Tribunal may extend the said period to ninety days for reasons to be recorded in writing for such extension.

Explanation.— For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.

(5) Where the Tribunal deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the board of such industrial company on such terms and conditions as may be prescribed for safeguarding its financial and other interests or in the public interest.

(6) The special director or special directors appointed under sub-section (5) shall submit a report to the Tribunal within sixty days from the date of appointment of such director or directors, about the state of affairs of the company in respect

of which reference has been made under sub-section (1) and such special director or directors shall have all the powers of a director of a company under this Act, necessary for discharge of his or their duties.

(7) The Tribunal may issue such directions to a special director appointed under sub-section (5) as it may deem necessary or expedient for proper discharge of his duties.

(8) The appointment of a special director referred to in sub-section (5) shall be valid and effective notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director or directors appointed by the Tribunal.

(9) Any special director appointed under sub-section (5), shall—

(a) hold office during the pleasure of the Tribunal and may be removed or substituted by any person by order of the Tribunal;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;

(d) nor be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.

424C. Powers of Tribunal to make suitable order on completion of inquiry.— (1) If after making an inquiry under section 424B, the Tribunal is satisfied that a company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or

make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A within a reasonable time.

(2) If the Tribunal decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses or pay its debt referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses or make repayment of the debts.

(3) If the Tribunal decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 424D in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Tribunal may,—

(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (3) of section 424A or on its own motion and pass a fresh order in respect of such company under sub-section (3);

(b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

424D. Preparation and sanction of schemes.—

(1) Where an order is made under sub-section (3) of section 424C in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in

this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely:—

(a) the financial reconstruction of such industrial company;

(b) the proper management of such industrial company by change in, or take over of, the management of such industrial company;

(c) the amalgamation of —

(i) such industrial company with any other company; or

(ii) any other company with such industrial company (hereinafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), such industrial company, referred to as "transferee-company");

(d) the sale or lease of a part or whole of any industrial undertaking of such industrial company;

(e) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(f) such other preventive ameliorative and remedial measures as may be appropriate;

(g) repayment of debt;

(h) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (g):

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension.

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;

(b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) the continuation by or against the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 424C;

(f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revival or rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial company;

(g) the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—

(i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(k) method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l) issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company;

(m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (a) The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(b) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(c) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company

concerned in the amalgamation and from any shareholder or any creditors or employees of such companies:

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company.

(4) The scheme may thereafter be sanctioned, within sixty days by the Tribunal (hereinafter referred to as the sanctioned scheme) and shall come into force on such date as the Tribunal may specify in this behalf:

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension:

Provided further that different dates may be specified for different provisions of the scheme.

(5) The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(7) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or

person or, as the case may be, the sick industrial company.

(8) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise), be admitted as evidence.

(9) A copy of the sanctioned scheme referred to in sub-section (8) shall be filed with the Registrar within the prescribed time by the company in respect of which such scheme relates.

(10) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(11) The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction:

Provided that no scheme shall be submitted by the creditors to the Tribunal unless such scheme has been approved by at least three-fourth in value of creditors of the sick industrial company.

(12) All the provisions relating to the preparation of scheme by the operating agency and sanction of such scheme by the Tribunal shall, as far as may be, apply to the scheme referred to in sub-section (11).

(13) The scheme referred to in sub-section (11) if sanctioned by the Tribunal shall be binding on all the creditors and on other concerned.

(14) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Tribunal may, on the recommendation of the operating agency or otherwise, by order, do anything, not consistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(15) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, direct any

operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to the sick industrial company as may be specified in the order.

(16) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of this Act.

(17) The Tribunal may monitor periodically the implementation of the sanctioned scheme.

424E. Rehabilitation by giving financial assistance.— (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to the sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Tribunal, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Tribunal may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(4) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance, shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial

assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(5) The financial institution and the bank designated under sub-section (4) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.

(6) Where in respect of any scheme consent under sub-section (2) is not given by any person required by the scheme to provide financial assistance, the Tribunal may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

424F. Arrangement for continuing operations, etc., during inquiry.— (1) At any time before completion of the inquiry under section 424B, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal—

(a) agreeing to an arrangement for continuing the operations of the sick industrial company; or

(b) suggesting a scheme for the financial reconstruction of the sick industrial company.

(2) The Tribunal May, within sixty days of the receipt of the application under sub-section (1), pass such orders thereon as it may deem fit.

424G. Winding up of sick industrial company.— (1) Where the Tribunal, after making inquiry under section 424B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.

(2) For the purpose of winding up of the sick industrial company, the Tribunal may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of such industrial company and the officer so appointed shall for the purpose of the winding up of such sick industrial company, be deemed to be, and have all the powers of, the official liquidator under this Act.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 529A, and other provisions of this Act.

(4) Without prejudice to the other provisions contained in this Act, the winding up of a company shall, as far as may be, concluded within one year from the date of the order made under sub-section (1).

424H. Operating agency to prepare complete inventory, etc.—Where for the proper discharge of the functions of the Tribunal under this Part, the circumstances so require, the Tribunal may, through any operating agency, cause to be prepared—

(a) with respect to a company a complete inventory of—

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d) an estimate of reserve price, lease rent or share exchange ratio;

(e) proforma accounts, where no up-to-date audited accounts are available.

424I. *Direction not to dispose of assets.*— The Tribunal may, if it is of the opinion, that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of inquiry under section 424B or during the period of preparation or consideration of the scheme under section 424C.

424J. *Power of Tribunal to call for periodic information.*— On receipt of reference under section 424A, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debt referred to in that section, as the case may be, and the company shall furnish such information

424K. *Misfeasance proceedings.*— (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company—

(a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or

(b) has been guilty of any misfeasance, malfeasance or non-feasance of breach of trust in relation to the sick industrial company,

the Tribunal may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.

(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a

bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period of ten years from the date of the order, any financial assistance to such person or any firm of which person is a partner or any company or other body corporate of which such person is a director (by whatever name called).

(3) No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.

(4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.

424L. *Penalty for certain offences.*— (1) Whoever violates the provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, he shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakh rupees.

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of an officer of the Tribunal or the Appellate Tribunal or any officer of the Central Government authorised by it or any officer of an operating agency as may be authorised in this behalf by the Tribunal or the Appellate Tribunal, as the case may be.

48. *Amendment of section 425.*— In section 425 of the principal Act, in sub-section (1),—

(i) in clause (a), for the word "Court", the word "Tribunal" shall be substituted;

(ii) in clause (b), the word "or" occurring at the end shall be omitted;

(iii) clause (c) shall be omitted.

49. *Amendment of sections 426 and 427.*— In section 426 and 472 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

50. *Amendment of heading and sub-heading before section 433.*— In the heading and sub-heading before section 433 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

51. *Substitution of new section for section 433.*— For section 433 of the principal Act, the following section shall be substituted, namely:—

"433. *Circumstances in which company may be wound up by Tribunal.*— A company may be wound up by the Tribunal,—

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up;

(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years;

(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G:

Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government."

52. *Amendment of section 434.*— In section 434 of the principal Act, in sub-section (1),—

(i) in clause (a), for the words "five hundred rupees", the words "one lakh rupees" shall be substituted;

(ii) in clause (b), for the words "any Court", the words "any Court or Tribunal" shall be substituted;

(iii) in clause (c), for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

53. *Omission of heading before section 435 and sections 435 to 438.*— Heading occurring before section 435 and sections 435 to 438 of the principal Act, shall be omitted.

54. *Amendment of section 439.*— In section 439 of the principal Act,—

(i) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(ii) in sub-section (1), after clause (f), the following clause shall be inserted, namely:—

"(g) in a case falling under clause (h) of section 433, by the Central Government or a State Government;"

(iii) in sub-section (5), for the word, brackets and letter "and (f)", the brackets, letters and word ", (f) and (g)" shall be substituted.

55. *Insertion of new section 439A.*— After section 439 of the principal Act, the following section shall be inserted, namely:—

"439A. *Statement of affairs to be filed on winding up of a company.*— (1) Every company shall file with the Tribunal a statement of its affairs along with the petition for winding up.

(2) Where a company opposes a petition for its winding up, it shall file with the Tribunal a statement of its affairs.

(3) The statement of affairs referred to in sub-section (1) or sub-section (2) shall be accompanied by—

(a) the last known addresses of all directors and company secretary of such company;

(b) the details of location of assets of the company and their value;

(c) the details of all debtors and creditors with their complete addresses;

(d) the details of workmen and other employees and any amount outstanding to them;

(e) such other details as the Tribunal may direct."

56. *Substitution of new sections for sections 440 and 441.*— For sections 440 and 441 of the principal Act, the following sections shall be substituted, namely:—

"440. *Right to present winding up petition where company is being wound up voluntarily.*—

(1) Where a company is being wound up voluntarily, a petition for its winding up by the Tribunal may be presented by—

(a) any person authorised to do so under section 439; or

(b) the Official Liquidator.

(2) The Tribunal shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.

441. *Commencement of winding up by Tribunal.*— (1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the opinion for the winding up."

57. *Insertion of new sections 441A, 441B, 441C, 441D, 441E, 441F and 441G.*— After section 441 of the principal Act, the following shall be inserted, namely:—

"Levy by way of cess and formation of Rehabilitation and Revival Fund.

441A. *Levy and collection of cess on turnover or gross receipts of companies.*— (1) There shall be levied and collected, for the purposes of rehabilitation or revival or protection of assets of the sick industrial company, a levy by way of cess at such rate not less than 0.005 per cent. and not more than 0.1 per cent. on the value of annual turnover of every company or its annual gross receipt, whichever is more as the Central Government may, from time to time, specify by notification in the Official Gazette.

(2) Every company shall pay to the Central Government the cess referred to in sub-section (1) within three months from the close of every financial year.

(3) Every company shall furnish, in such form as may be prescribed, to the Central Government and the Tribunal the details of its turnover and gross receipts with payment of cess under sub-section (1).

(4) The Central Government may, by rules made in this behalf, specify the manner in which the cess shall be paid under sub-section (2).

441B. *Crediting proceeds of cess to Consolidated Fund of India.*— The proceeds of the cess levied and collected under section 441A shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal, from time to time, out of such proceeds (after deducting the cost of collection), such sums of money as it may think fit for being utilised for the purposes of the Fund.

441C. *Rehabilitation and revival Fund.*— (1) There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund.

(2) There shall be credited to the Fund—

(a) all amounts paid under section 441B;

(b) any amount given as grants by the Central Government for the purposes of this Fund;

(c) any amount given to the Fund from any other source;

(d) any income from investment of the amount in the Fund;

(e) amount refunded by the company under section 441G.

441D. *Application of Fund.*— The Fund shall be applied by the Tribunal for the purpose of—

(a) making interim payment of workmen's dues pending the revival or rehabilitation of the sick industrial company; or

(b) payment of workmen's dues due to the workmen, referred to in sub-section (3) of section 529, of the sick industrial company; or

(c) protection of assets of sick industrial company; or

(d) revival or rehabilitation of sick industrial company;

which in the opinion of the Tribunal are necessary or expedient for the said purposes.

441E. *Power to call for information.*— The Central Government or Tribunal may require any company to furnish for the purposes of rehabilitation or revival or protection of assets of sick industrial companies, such statistical and other information in such form and within such period as may be prescribed.

441F. *Penalty for non-payment of cess.*— (1) If any cess payable by a company under section 441A is not paid in accordance with the provisions of that section, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in such manner as may be prescribed.

(2) Then Tribunal may, after such inquiry as it deems fit, impose on the company, which is in arrears under sub-section (1), a penalty not exceeding ten times the amount in arrears:

Provided that before imposing such penalty, such company shall be given a reasonable opportunity of being heard, and if, after such hearing, the Tribunal is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this sub-section.

441G. *Refund of fund in certain cases.*— (1) Where the fund has been applied by the Tribunal for any of the purposes specified in clauses (a) to (d) of section 441D, such amount of fund shall be recovered from the company after its revival or

rehabilitation or out of sale proceeds of its assets after discharging the statutory liabilities and payment of dues to creditors.

(2) The amount referred to in sub-section (1) shall be recovered in the manner as the Tribunal may direct."

58. *Amendment of heading before section 442.*— In the heading before section 442 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

59. *Omission of section 442.*— Section 442 of the principal Act shall be omitted.

60. *Substitution of new sections for sections 443 and 444.*— For sections 443 and 444 of the principal Act, the following sections shall be substituted, namely:—

"443. *Power of Tribunal on hearing petition.*— (1) On hearing a winding up petition, the Tribunal may—

(a) dismiss it, with or without costs; or

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order that it thinks fit; or

(d) make an order for winding up the company with or without costs, or any other order that it thinks fit:

Provided that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Tribunal may—

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Tribunal, are responsible for the default.

444. Order for winding up to be communicated to Official Liquidator and Registrar.— Where the Tribunal makes an order for the winding up of the company, the Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator and the Registrar.”.

61. Amendment of section 446.— In section 446 of the principal Act,—

(a) in sub-section (1), for the word “Court” at both the places where it occurs, the word “Tribunal” shall be substituted;

(b) in sub-section (2), for the words “The court which is winding up the company”, the words “The Tribunal” shall be substituted;

(c) sub-section (3) shall be omitted.

62. Insertion of new section 446A.— After section 446 of the principal Act, the following section shall be inserted, namely:—

“446A. Responsibility of directors and officers to submit to Tribunal audited books of account.— The directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment for a term not exceeding one year and a fine for an amount not exceeding one lakh rupees.”.

63. Substitution of new section for section 448.— For section 448 of the principal Act, the following section shall be substituted, namely:—

‘448. Appointment of Official Liquidator.— (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who—

(a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works

accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or

(b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or

(c) may be a whole-time or a part-time officer appointed by the Central Government:

Provided that, before appointment the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.

(2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be—

(a) approved by the Tribunal for those appointed under clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent. of the value of debt recovered and realisation of sale of assets;

(b) approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf.

(3) Where the Official Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.

(4) All references to the “Official Liquidator” in this Act shall be construed as reference to the Official Liquidator specified in sub-section (1), or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.

(5) The amount of the remuneration payable shall—

(a) form part of the winding up order made by the Tribunal;

(b) be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be.

(6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf:

Provided that the Tribunal may—

(a) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing;

(b) remove the Official Liquidator on sufficient cause being shown;

(c) proceed against the Official Liquidator for professional misconduct.

64. *Amendment of section 450.*— In section 450 of the principal Act, for the word "Court" wherever it occurs, the word "Tribunal" shall be substituted.

65. *Amendment of section 451.*— In section 451 of the Principal Act,—

(a) in sub-section (1), for the word "Court", the word "Tribunal" shall be substituted;

(b) in sub-section (2), for the words "Official Liquidator", the words, brackets, letter and figures "the Official Liquidator referred to in clause (c) of sub-section (1) of section 448" shall be substituted.

66. *Amendment of sections 453 to 456.*— In sections 453 to 456 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

67. *Amendment of section 457.*— In section 457 of the principal Act,—

(a) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(b) in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

"(ca) to sell whole of the undertaking of the company as a going concern;"

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

"(2A) The liquidator shall—

(a) appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice;

(b) appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value of the company's assets within fifteen days after taking into custody of property, assets referred to in sub-clause (a) and effects or actionable claims subject to such terms and conditions as may be specified by the Tribunal;

(c) give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause (b), as the case may be.

(2B) The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional liquidator is made, issue a notice requiring any of the persons mentioned in sub-section (2) of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.

(2C) The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.

(2D) The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of company as may be put to him by the liquidator.

(2E) Every bidder shall, in response to the advertisement referred to in clause (c) of sub-section (2A), deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty-five days from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited:

Provided that such bid may be withdrawn within three days before the last day of closing of the bid:

Provided further that then inspection of property shall be open for not more than five days before closing of the bid.

(2F) The advertisement inviting bids shall contain the following details, namely:—

(a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale;

(b) last date for submitting bids which shall not exceed ninety days from the date of advertisement;

(c) time during which the premises of the company shall remain open for inspection;

(d) the last date for withdrawing the bid;

(e) financial guarantee which shall not be less than one-half of the value of the Bid;

(f) validity period of the bids;

(g) place and date of opening of the bids in public;

(h) reserve price and earnest money to be deposited along with the bid;

(i) any other terms and conditions of sale which may be prescribed.

(2G) The liquidator appointed shall—

(a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal."

68. *Amendment of sections 458 and 458A.*—In sections 458 and 458A of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

69. *Substitution of new section for section 459.*—For section 459 of the principal Act, the following section shall be substituted, namely:—

"459. *Provision for legal assistance to liquidator.*—The liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties."

70. *Amendment of sections 460 to 465.*—In sections 460 to 465 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

71. *Amendment of heading before section 466.*—In the heading before section 466 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

72. *Substitution of new section for section 466.*—For section 466 of the principal Act, the following section shall be substituted, namely:—

"466. *Power of Tribunal to stay winding up.*—
(1) The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.

(2) On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

73. *Amendment of sections 467 to 469.*—In sections 467 to 469 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

74. *Substitution of new section for section 470.*—For section 470 of the principal Act, the following section shall be substituted, namely:—

"470. *Power of Tribunal to make calls.*— (1) The Tribunal may, at any time after making winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

(2) In making a call, the Tribunal may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call."

75. *Amendment of section 471.*— In section 471 of the principal Act, for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

76. *Substitution of new section for section 472.*— For section 472 of the principal Act, the following section shall be substituted, namely:—

"472. *Moneys and securities paid into bank to be subject to order of Tribunal.*— All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Tribunal, shall be subject in all respects to the orders of the Tribunal."

77. *Amendment of sections 473 to 477.*— In sections 473 to 477 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

78. *Amendment of section 478.*— In section 478 of the principal Act,—

(a) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(b) in sub-section (3) and clause (b) of sub-section (6), for the words "advocate, attorney or pleader entitled to appear before the Court", the words, figures and letters "chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD" shall be substituted;

(c) for sub-section (10), the following sub-section shall be substituted, namely;—

"(10) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.";

(d) in sub-section (11), for the words "exercised by the Judge or officer", the words "exercised by the person or authority" shall be substituted.

79. *Amendment of section 479.*— In section 479 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

80. *Substitution of new section for section 480.*— For section 480 of the principal Act, the following section shall be substituted, namely:—

"480. *Saving of existing powers of Tribunal.*— Any powers conferred on the Tribunal by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums."

81. *Amendment of section 481.*— In section 481 of the principal Act, for the word "Court" at both the places where it occurs, the word "Tribunal" shall be substituted.

82. *Amendment of section 483.*— In section 483 of the principal Act, for the words "any order made, or decision given", the words, brackets and figures "any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002" shall be substituted.

83. *Amendment of sections 490 and 492.*— In sections 490 and 492 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted

84. *Amendment of section 494.*— In section 494 of the principal Act, in sub-section (5),—

(a) for the words "or subject to the supervision of the Court", the words "the Tribunal" shall be substituted;

(b) for the words "sanctioned by the Court", the words "sanctioned by the Tribunal" shall be substituted.

85. *Amendment of section 497.*— In section 497 of the principal Act, —

(a) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(b) for the words "Official Liquidator", wherever they occur, the words, brackets, letter and figures "Official Liquidator referred to in clause (c) of sub-section (1) of section 448" shall be substituted.

86. *Amendment of sections 502 to 504, 506 and 507.*— In sections 502 to 504, 506 and 507 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

87. *Amendment of section 509.*— In section 509 of the principal Act,—

(a) for the words "Official Liquidator", wherever it occurs, the words, brackets, letter and figures "Official Liquidator referred to in clause (c) of sub-section (1) of section 448" shall be substituted;

(b) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

88. *Amendment of sections 511A and 512.*— In sections 511A and 512 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

89. *Amendment of section 513.*— In section 513 of the principal Act, after sub-section (3), the following proviso shall be inserted, namely:—

"Provided that, notwithstanding anything contained in any other law for the time being in force, a body corporate consisting of such professionals as may be approved by the Central Government from time to time, shall be qualified for appointment as Official Liquidator under section 448."

90. *Substitution of new section for section 515.*— For section 515 of the principal Act, the following section shall be substituted, namely:—

"515. *Power of Tribunal to appoint and remove liquidator in voluntary winding up.*— (1) If from any cause whatever, there is no liquidator acting, the Tribunal may appoint the Official Liquidator or any other person as a liquidator.

(2) The Tribunal may, on cause shown, remove a liquidator and appoint the Official Liquidator or

any other person as a liquidator in place of the removed liquidator.

(3) The Tribunal may also appoint or remove a liquidator on the application made by the Registrar in this behalf.

(4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Tribunal and shall be credited to the Central Government."

91. *Amendment of section 517.*— In section 517 of the principal Act, for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

92. *Substitution of new sections for sections 518 and 519.*— For sections 518 and 519 of the principal Act, the following sections shall be substituted, namely :—

"518. *Power to apply to Tribunal to have questions determined or powers exercised.*— (1) The liquidator or any contributory or creditor may apply to the Tribunal,—

(a) to determine any question arising in the winding up of a company; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if any company were being wound up by the Tribunal.

(2) The liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(4) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar,

who shall make a minute of the order in his books relating to the company.

519. Application of liquidator to Tribunal for public examination of promoters, directors, etc.—

(1) The liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Tribunal may, after considering the report, direct that person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions."

93. Omission of sections 522 to 527.— Sections 522 to 527 of the principal Act shall be omitted.

94. Amendment of sections 531 and 531A.— In sections 531 and 531A of the principal Act, for the words "or subject to the supervision of the Court", the words "the Tribunal" shall be substituted.

95. Amendment of sections 533 and 535.— In sections 533 and 535 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

96. Amendment of section 536.— In section 536 of the principal Act, in sub-section (2),—

(a) for the words "or subject to the supervision of the Court", the words "the Tribunal" shall be substituted;

(b) for the words "unless the Court", the words "unless the Tribunal" shall be substituted.

97. Substitution of new section for section 537.— For section 537 of the principal Act, the following section shall be substituted, namely:—

"537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal.— (1) Where any company is being wound up by the Tribunal—

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal, of any of the properties or effects of the company after such commencement,

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government."

98. Amendment of section 538.— In section 538 of the principal Act, in sub-section (1),—

(a) for the words "or subject to the supervision of the Court", the words "the Tribunal" shall be substituted;

(b) for the words "by the Court", the words "by the Tribunal" shall be substituted.

99. Amendment of sections 540 and 542.— In sections 540 and 542 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

100. Substitution of new section for section 543.— For section 543 of the principal Act, the following section shall be substituted, namely:—

"543. Power of Tribunal to assess damages against delinquent directors, etc.— (1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Tribunal may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to

the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable."

101. *Amendment of section 544.*— In section 544 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

102. *Amendment of section 545.*— In section 545 of the principal Act,—

(a) in sub-section (1), for the words "or subject to the supervision of Court", the words "the Tribunal" shall be substituted;

(b) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

103. *Amendment of section 546.*— In section 546 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "sanction of the Court", the words "sanction of the Tribunal" shall be substituted;

(ii) for the words "or subject to the supervision of the Court", the words "the Tribunal" shall be substituted;

(b) in sub-section (1A),—

(i) for the words "winding up by the Court", the words "winding up by the Tribunal" shall be substituted;

(ii) for the words "sanction of the Court", the words "sanction of the Tribunal" shall be substituted;

(c) in sub-sections (2) and (3), for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

104. *Amendment of section 547.*— In section 547 of the principal Act, in sub-section (1), for the words "or under the supervision of the Court", the words "the Tribunal" shall be substituted.

105. *Amendment of section 549.*— In section 549 of the principal Act, for the words "or subject to the supervision of Court", the words "the Tribunal" shall be substituted.

106. *Amendment of section 550.*— In section 550 of the principal Act,—

(i) in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

"(a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs;"

(ii) in sub-section (3), in clause (b), for the words "appeal to the Court", the words "appeal to the Tribunal" shall be substituted.

107. *Amendment of section 551.*— In section 551 of the principal Act,—

(a) in sub-sections (1), for clause (a), the following clause shall be substituted, namely:—

"(a) in the case of a winding up by the Tribunal, in Tribunal; and";

(b) in sub-section (2), for the word "Court", the word "Tribunal" shall be substituted.

108. *Amendment of section 553.*— In section 553 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

109. *Amendment of section 555.*— In section 555 of the principal Act,—

(a) in sub-sections (6) and (9), for the words "or under the supervision of the Court", the words "the Tribunal" shall be substituted;

(b) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

110. *Amendment of section 556.*— In section 556 of the principal Act, for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

111. *Amendment of heading before section 557.*— In the heading before section 557 of the principal

Act, for the word "Court", the word "Tribunal" shall be substituted.

112. *Amendment of section 557.*— In section 557 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

113. *Amendment of section 558.*— In section 558 of the principal Act,—

(a) in sub-section (1), in clause (a), for the word "Court", the words "Court or the Tribunal" shall be substituted;

(b) in sub-section (2),—

(i) for the words "All Courts", the words "All Courts, Tribunals" shall be substituted;

(ii) for the words "such Court", the words "such Court, Tribunal" shall be substituted.

114. *Amendment of sections 559, 560, 581 and 582.*— In section 559, 560, 581 and 582 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

115. *Amendment of section 583.*— In section 583 of the principal Act,—

(a) in sub-section (1), for the words, brackets and figure "sub-sections (2)", the words, brackets and figure "sub-sections (3)" shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3), for the words "or subject to the supervision of Court", the words "by the Tribunal" shall be substituted;

(d) in sub-section (4), for the word "Court", the word "Tribunal" shall be substituted;

(e) in sub-section (5),—

(i) in clause (a) and (b), for the word "Court", the word "Tribunal" shall be substituted;

(ii) in clause (c), for the words "order of any Court", the words "order of any Court or Tribunal" shall be substituted;

(iii) in clause (d), for the words "satisfaction of the Court", the words "satisfaction of the Tribunal" shall be substituted.

116. *Amendment of sections 587 to 589.*— In sections 587 to 589 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted

117. *Amendment of section 610.*— In section 610 of the principal Act, in sub-section (2), for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

118. *Amendment of section 614.*— In section 614 of the principal Act, in sub-section (1), for the words "Company Law Board", the word "Tribunal" shall be substituted.

119. *Amendment of section 621.*— In section 621 of the principal Act, in sub-section (1), the brackets, words and figures "(other than an offence with respect to which proceedings are instituted under section 545)" shall be omitted.

120. *Substitution of new section for section 621A.*— For section 621A of the principal Act, the following section shall be substituted, namely:—

621A. *Composition of certain offences.*—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 2 of 1974, any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Government may prescribe:

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.— For the purposes of this section, any second or subsequent offence committed after

the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Central Government.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

(5) Any officer or other employee of the company who fails to comply with any order made by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding fifty thousand rupees or with both.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section."

121. *Amendment of section 626.*— In section 626 of the principal Act, for the word "Court", the words "Court or Tribunal" shall be substituted.

122. *Amendment of section 627.*— In section 627 of the principal Act,—

(a) in sub-section (1), after the words " a Judge of a High Court in Chambers ", the words "or Tribunal, as the case may be" shall be inserted;

(b) in sub-section (3), after the words "Judge of the High Court", the words "or Tribunal, as the case may be" shall be inserted.

123. *Amendment of section 632.*— In section 632 of the principal Act, for the word "Court", the words "Court or Tribunal" shall be substituted.

124. *Amendment of section 634A.*— In section 634A of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002."

125. *Amendment of section 635.*— In section 635 of the principal Act, in sub-section (4), for the words "Company Law Board", the words "Company Law Board or Tribunal" shall be substituted.

126. *Amendment of section 635 B.*— In section 635B of the principal Act,—

(a) for the words "Company Law Board" wherever they occur, the word "Tribunal" shall be substituted;

(b) for the word "Court" at both the places where it occurs, the words "Appellate Tribunal" shall be substituted.

127. *Substitution of new section for section 637A.*— For section 637A of the principal Act, the following section shall be substituted, namely:—

"637A. Power of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.— (1) Where the Central Government or Tribunal is required or authorised by any provision of this Act,—

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed:

Provided that different fees may be prescribed for applications in respect of different matters or in

case of applications by companies, for applications by different classes of companies."

128. *Amendment of heading before section 640A.*—In the heading before section 640A of the principal Act, for the words "Court or the Company Law Board", the words "Court or the Tribunal" shall be substituted.

129. *Substitution of new section for section 640A.*— For section 640 A of the principal Act, the following section shall be substituted, namely:—

"640A. Exclusion of time required in obtaining copies of order of Court or Tribunal.— Except as expressly provided in this behalf elsewhere in this Act, where by any provision of this Act, any order of the Court or Tribunal is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded."

130. *Substitution of new section for section 643.*—For section 643 of the principal Act, the following section shall be substituted, namely:—

"643. Power of Central Government to make rules relating to winding up.— (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908, providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

(2) In particulars, and without prejudice to the generality of the forgoing power, such rule may provide for all or any of the following matters, namely:—

(i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 391;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital;

(v) generally for all applications to be made to the Tribunal under the provisions of this Act;

(vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(vii) the settling of lists of contributories and the rectifying of the register of members where required and collecting and applying the assets;

(viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(ix) the making of calls; and

(x) the fixing of a time within which debts and claims shall be proved.

(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of the Companies (Second Amendment) Act, 2002, and in force at such commencement, shall continue to be in force, in so far as they are not inconsistent with then provisions of this Act, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be constructed as a reference to the Tribunal."

131. *Insertion of new section 647A.*—After section 647 of the principal Act, the following section shall be inserted, namely:—

"647 A. *Transfer of winding up proceedings to Tribunal.*—All proceedings (including proceedings relating to arbitration, compromises, arrangements and reconstruction and winding up of a company) pending before the commencement of the Companies (second Amendment) Act, 2002 before any District Court or High Court, under this Act, or the Insurance Act, 1938 or 4 of 1938, any other law for the time being in force other than under the Banking Regulation Act, 1949, shall be transferred to the 10 of 1949. Tribunal from the date to be notified by the Central Government, in the Official Gazette, and the Tribunal may proceed with the matter either *de novo* or from the stage it was so transferred:

Provided that where the winding up of a company has commenced, subject to the supervision of the District Court or a High Court, before the commencement of the Companies (Second

Amendment) Act, 2002, such winding up shall continue to be under the supervision of the District Court or the High Court, as the case may be, and the company shall be wound up in the same manner and in the same incidents as if the Companies (Second Amendment) Act, 2002 had not been passed."

132. *Amendment of Schedule XI to Companies Act, 1956.*—In Schedule XI to the principal Act, for the words "Company Law Board" wherever they occur, the word "Tribunal" shall be substituted.

133. *Amendment of other enactment.*—The enactment specified in the Schedule to this Act shall be amended in the manner specified therein.

134. *Insertion of new section 651 A.*—After section 651 of the principal Act, the following section shall be inserted, namely:—

"651A. *Reference of winding up of companies in any law.*— Unless the context otherwise requires,—

(a) any reference to the winding up of a company by a Court or High Court or winding up of a company subject to supervision of a Court or High Court in any law (except the Banking Regulation Act, 1949) shall, in so far as it relates to 10 of 1949. winding up of a company, be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act;

(b) any reference to the Company Law Board in any law, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.

THE SCHEDULE

(See section 133)

Amendments to the Insurance Act, 1938

(4 of 1938)

1. Section 2,—

(a) in clause (8), for "the Indian Companies Act, 1913", substitute "the Companies Act, 7 of 1913. 1 of 1956. 1956";

(b) after clause (13B), insert the following:—

"(13BA) "National Company Law Tribunal" means the National Company Law Tribunal constituted under section 10FB of the Companies Act, 1956; 1 of 1956.

(13BB) "National Company Law Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956;

1 of 1956.

2. Section 53,—

(a) for sub-section (1), substitute the following, namely:—

"(1) The Tribunal may order the winding up in accordance with the Companies Act, 1956, of any insurance company and the provisions of that Act shall, subject to the provisions of this Act, apply accordingly.";

(b) in sub-section (2), for "Court" wherever it occurs, substitute "Tribunal".

3. Section 54, for "Indian Companies Act, 1913", substitute "Companies Act, 1956".

7 of 1913.
1 of 1956.

4. Section 55,—

(a) for "Court", wherever it occurs, substitute "Tribunal";

(b) in sub-section (3), for "section 246 of the Indian Companies Act, 1913", substitute "section 643 of the Companies Act, 1956".

7 of 1913.
1 of 1956.

5. Section 56, in sub-section (2), in the proviso, in clause (a), for "Court", at both the places where it occurs, substitute "Tribunal".

6. Section 57,—

(a) in sub-section (1), omit "or under the supervision of the Court";

(b) for "Court" wherever it occurs, substitute "Tribunal".

7. Sections 58, 59, 60 and 61, for "Court" wherever it occurs, substitute "Tribunal".

8. After section 61, insert the following:—

"61A. Appeal to National Company Law Appellate Tribunal.— (1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the National Company Law Appellate Tribunal.

(2) No appeal shall lie to the National Company Law Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:

Provided that the National Company Law Appellate Tribunal may entertain an appeal after the expiry of said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the National Company Law Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The National Company Law Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the National Company Law Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal."

9. In section 110, in sub-section (1), in clause (f), omit "an insurer or".

Department of Public Health

Order

47/30/2004-I/PHD (861)

Sanction of the Government is hereby accorded for revival of following 45 posts of various categories under Directorate of Health Services. The details are as under:—

Sr. No.	Name of the post	No. of post	Place of vacancy	Pay scale
1	2	3	4	5
1.	Medical Officer	2	1. Hospicio Hospital, Margao. 2. PHC, Shiroda.	Rs. 8000-13500
2.	Sr. Surgeon	1	Asilo Hospital, Mapusa.	Rs. 10000-15200
3.	Jr. Anaesthetist	2	1. UPHC, Curchorem. 2. CHC, Canacona.	Rs. 8000-13500

1	2	3	4	5
4.	Sr. Ophthalmic Surgeon	1	Hospicio Hospital, Margao.	Rs. 10000-15200
5.	Multipurpose Health Worker (Male)	14	1. PHC, Cansaulim HQ. 2. S. C. Betalbatim, PHC, Cansaulim. 3. S. C. Cundaim, PHC, Marcaim. 4. S. C. Collem, PHC, Sanguem. 5. S. C. Paz, PHC, Shiroda. 6. UHC, Panaji. 7. UHC, Vasco. 8. CHC, Pernem HQ. 9. S. C. Savoiverem, CHC, Ponda. 10. S. C. St. Jose de Areal, PHC, Curtorim. 11. S. C. Rivona, UPHC, Curchorem. 12. UPHC, Curchorem. 13. PHC, Aldona HQ. 14. PHC, Cansaulim.	Rs. 3050-4590
6.	Multipurpose Health Worker (Female)	10	1. S. C. Nagargao, CHC, Valpoi. 2. S. C. Sirsodem, CHC, Valpoi. 3. S. C. Mencurem, PHC, Bicholim. 4. S. C. Piligao, PHC, Bicholim. 5. S. C. Assonora, PHC, Colvale. 6. S. C. Pirna, PHC, Colvale. 7. S. C. Havelem, PHC, Sanquelim. 8. S. C. Mandrem, CHC, Pernem. 9. CHC, Pernem. 10. CHC, Pernem HQ.	Rs. 3050-4590
7.	L.D.C.	4	1. Hospicio Hospital, Margao. 2. Accounts Section, DHS, Panaji. 3. Institute of Nursing Education, Panaji. 4. T. B. Control Programme, Panaji.	Rs. 3050-4590
8.	Laboratory Technician	1	PHC, Chinchinim.	Rs. 4000-6000
9.	Stenographer	1	Hospicio Hospital, Margao.	Rs. 4000-6000
10.	Ophthalmic Assistant	4	1. Ophthalmic Cell, DHS. 2. CHC, Pernem. 3. PHC, Bicholim. 4. Hospicio Hospital, Margao.	Rs. 4500-7000
11.	Social worker	1	S.T.D. Control Programme, DHS.	Rs. 4000-6000
12.	Assistant Biochemist	1	Asilo Hospital, Mapusa.	Rs. 5000-8000
13.	Extension Educator	3	1. PHC, Bicholim. 2. Cottage Hospital, Chicalim. 3. PHC, Sanguem.	Rs. 4500-7000
Total		45		

This issues with the concurrence of Finance Department vide their U. O. No. Finance (R&C)/578-F dated 21-2-05.

By order and in the name of the Governor of Goa.

Jessie Freitas, Under Secretary (Health-II).

Porvorim, 8th April, 2005.